

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11340 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRA PRASAD MISHRA

Versus

UNION OF INDIA & 2

Appearance:

MR GI DESAI for Petitioner

MR J.D. Ajmera, Advocate, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/04/96

ORAL JUDGEMENT

The grievance of the petitioner is that he was denied promotion to the post of Subedar Major on the basis of one red ink entry, which according to the rules, operates for one year.

The petitioner was working as a Naik Subedar and was thereafter promoted to the post of Nursing Technician Group B on 27.3.1986 in the Army. He had passed three years Diploma in General Nursing and had secured first

position and a Gold Medal for best performance. It appears that while in service the petitioner who was working in the hospital premises had a verbal exchange with his superior Lt. D.B. Dayal. According to the petitioner he was verbally warned for the said behaviour. However, later he was punished again by giving him a severe reprimand (censure). He thereafter made a representation on 15.9.1994, a copy of which is at Annexure-C to the petition. The representation though addressed to the Deputy Judge-Advocate General, HQ, Southern Command was to be considered by the Competent Authority who is said to be GOC-In-Charge, Southern Command. No decision has been taken so far on that representation.

The case of the respondent authorities is that the petitioner's claim for promotion to the post of Subedar Major made in this petition does not stand because he was considered for promotion but because of the red ink entry in the service record of the petitioner which was to operate for one year, during which period the petitioner reached superannuation on 31.10.1994, he could not be promoted as Subedar Major. As per paragraph 387(b)(vi) of the Regulations for the Army the punishment of severe reprimand is a punishment for which red ink entry is made in the Annual Confidential Report and as per the provisions contained in ROI 41/83 a Junior Commissioned Officer who has incurred red ink entry is not eligible for further promotion for one year or three years or permanently, depending upon the nature of the offence.

The petitioner claims promotion from 21.8.1994 when his Junior Mr. Sampathrao came to be promoted. The affidavit-in-reply filed by the respondent authorities discloses that the petitioner's case was considered for promotion when the occasion had arisen and it was only because of the red ink entry that he became ineligible for further promotion for one year, during which period he retired on 31.10.1994. The petitioner's representation against the order imposing punishment on him is pending and no decision is as yet taken thereon by the concerned authority. The order of severe reprimand is not challenged in the present petition and rightly so because that is the subject matter of the departmental appeal. If the Department decides the representation of the petitioner in his favour then they would obviously also consider the consequential effect of such order in context of promotion of the petitioner from the due date. So far the present petition is concerned, the petitioner's case having been considered for promotion and because he was ineligible due to red ink entry, it cannot be said that the action of the respondents is not

promoting the petitioner is unjust or arbitrary. The learned counsel for the petitioner submits that the petitioner would like to place reliance on the order of Gauhati High Court dated 17.5.1994, a copy of which is at Annexure-B to the affidavit-in-rejoinder. That also may be taken into consideration by the concerned authority while considering the representation of the petitioner. The petition is therefore rejected, subject to the directions that the representation of the petitioner dated 15.9.1994 will be considered and decided upon by the concerned authority expeditiously preferably within 8 weeks from the date on which the writ of this order is received by the concerned authority. Rule is discharged with no order as to costs.

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